

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
CRIMINAL REVISION APPLICATION No. 149 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA

SD/-

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
? **1 to 5 NO**

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JODHABHAI MOGHABHAI BHARWAD - Applicant(s)

Versus

DILIPBHAI B MODI & 1 - Respondent(s)

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Appearance :

MR JB PARDIWALA for Applicant(s) : 1,

MR YV SHAH for Respondent(s) : 1,

MR HL JANI ADDL PUBLIC PROSECUTOR for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 02/04/2007

ORAL JUDGMENT :

1. The petitioner has approached this court in 1996 under section 397 of the Code of Criminal Procedure, 1973 ("the Code" for short) after being convicted by learned Judicial Magistrate,

First Class, Gandevi on 12.1.1994 of the offence punishable under section 7 (1) of the Prevention of Food Adulteration Act, 1954 (for short "the Act") and sentenced to one year of rigorous imprisonment with fine of Rs.1,000/- and after that conviction and sentence being confirmed in appeal by learned Additional Sessions Judge, Valsad by order dated 30.1.1996. There is no dispute about the fact that sample of milk was taken from the petitioner on 29.7.1988, duly analyzed and proved to be containing constituents in such quantities which were at variance with the prescribed standard and the petitioner had failed to substantiate his plea of being aged only 18 years at the time of the offence.

2. Learned counsel Mr.J.B.Pardiwala, appearing for the petitioner, with learned advocate Mr.Rishabh Shah, submitted that, apart from absence of freezing point test of the sample for determining addition of water, the petitioner claimed to be sufficiently punished in view of the imprisonment already undergone by him. It was submitted that a period of about 19 years had gone by and since the petitioner had, at the relevant time, just crossed the age of 18, he could still be considered for some leniency in the matter of punishment. The learned counsel relied upon the observations of the

Hon'ble Supreme Court in ***Bhagwan Das Motu Lal Navlani v. State of Maharashtra [(1987) 2 SCC 645]*** in support of the submission that, when report of public analyst did not indicate any addition of a foreign substance and when specific test for determining the percentage of water was not carried out, it was a fit case for exercising the discretion of the court to award minimum punishment prescribed under the provisions of section 16 (1) (a) of the Act.

3. Learned counsel for the respondent having no objection to the punishment being reduced to the minimum for the aforesaid reasons, the present revision application is partly allowed so as to modify the order of sentence to the extent that the petitioner would be required to undergo imprisonment for a total period of three months. The petitioner shall surrender to jail for serving the remaining period of imprisonment of about one week, on or before 20.04.2007. His bail bond shall be cancelled. Rule is made absolute accordingly with no order as to costs.

Sd/-
(***D.H.Waghela, J.***)

(KMG Thilake)